



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Raul Curbelo	Examiner:	Unassigned
Serial No.:	10/626,094	Art Unit:	Unassigned
Filed:	July 24, 2003	Docket:	15684
For:	INFRARED SOURCE FOR SPECTROMETERS	Dated:	June 21, 2004

Confirmation No. 8997

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT OF FACTS UNDER 37 CFR §1.47(b) IN SUPPORT OF FILING BY
ASSIGNEE ON BEHALF OF NON-SIGNING SOLE INVENTOR**

1. I am the attorney representing the assignee, Digilab, LLC doing business at 68 Mazzeo Drive, Randolph, Massachusetts 02368 on the above matter.
2. The assignee requests that this application be made and filed pursuant to 37 C.F.R. §1.47(b).
3. This petition should be granted since the sole inventor, Raul Curbelo, has refused to sign the declaration under 37 CFR §1.63.
4. On July 24, 2003, a non-provisional patent application entitled Infrared Source for Spectrometers was filed on behalf of the Assignee. The non-provisional patent application claimed the benefit of priority under 35 U.S.C. §119(e) of US Provisional Application No. 60/398,481 filed on July 25, 2002.
5. At the time of the provisional patent application, the sole inventor, Raul Curbelo, an electrical engineer, was an employee of the Assignee. Mr. Curbelo had assigned the rights to

the Assignee of all relevant inventions produced during his period of employment, as evidenced by the Inventions Agreement signed by Raul Curbelo on November 9, 2001 which is presented with the accompanying Statement of Facts Under 37 CFR §1.47 by Michael Fuller.

6. Presently, Mr. Curbelo refuses to sign the declaration or participate in the prosecution of the application. The Assignee has made reasonable and diligent efforts to obtain Mr. Curbelo's signature by mailing the Declaration to him, and by making numerous attempts to contact him by telephone.

7. Upon information and belief, Mr. Curbelo's mailing and residential address is:

24 Philip Road
Lexington, MA 02421

8. Upon information and belief, Mr. Curbelo is a United States citizen.

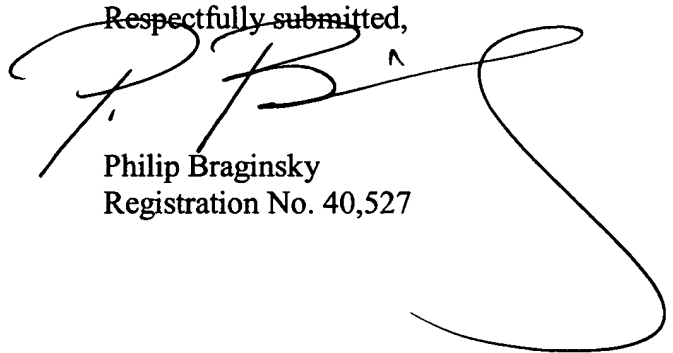
9. The attached Declaration is signed by the President of Digilab, LLC, Mr. David Giddings, who is fully authorized to act on behalf of the Assignee.

10. It is respectfully requested that this petition under 37 C.F.R. §1.47(b) be granted in all respects and that the Assignee be granted whatever other remedies available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the

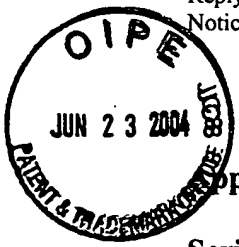
United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'P. Braginsky', with a long horizontal flourish extending to the right.

Philip Braginsky
Registration No. 40,527

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343/4366 FAX
PB/ANF:nis



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Applicants:	Raul Curbelo	Examiner:	Unassigned
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STATEMENT OF FACTS UNDER 37 CFR §1.47

1. I am the chief technology officer employed by the Assignee, Digilab, LLC, doing business at 68 Mazzeo Drive, Randolph, Massachusetts, and I am the manager of the intellectual property interests of Digilab, LLC.

2. The Assignee requests that this application be made and filed pursuant to 37 C.F.R. §1.47.

3. This petition should be granted to preserve the rights of the parties and to prevent irreparable damage since the sole inventor, Raul Curbelo, has refused to sign the declaration under 37 C.F.R. §1.63. Digilab, LLC has a proprietary interest in the application because the invention was conceived and reduced to practice by Mr. Curbelo as a primary function of his employment by Digilab, LLC using Digilab, LLC resources under the terms of his employment agreement.

4. Digilab, LLC will suffer irreparable damage if the prosecution of this patent application is not allowed because of loss of the right to exclude others from making, using or selling the invention in the United States due to the patent application going abandoned.

5.. On July 24, 2003, the Assignee's representative filed a non-provisional patent application entitled Infrared Source for Spectrometers. The non-provisional patent application claimed the benefit of priority under 35 U.S.C. 119(e) of US Provisional Patent Application No. 60/398,481 filed on July 25, 2002.

6. At the time of the provisional patent application, the sole inventor, Raul Curbelo, an electrical engineer, was an employee of the Assignee beginning employment on June 1, 1961 and through July 31, 2003. As part of the terms of his employment, Mr. Curbelo assigned the rights to Digilab, LLC of all relevant inventions produced during his period of employment, as evidenced by the enclosed Inventions Agreement signed by Raul Curbelo on November 9, 2001.
(EXHIBIT A)

By right under the Invention Agreement, duly and properly executed by Raul Curbelo, the Assignee, Digilab, LLC, is authorized to take action with respect to this application pursuant to 37 CFR 3.73.

7. Subsequently, on July 31, 2003 Mr. Curbelo was terminated from employment.

8. When it became time to convert the provisional patent into a non-provisional application, Mr. Curbelo assisted in reviewing the non-provisional application and provided comments.

9. However, following the filing of the non-provisional application, Mr. Curbelo refused to sign the Declaration Under 37 CFR 1.63. Attempts were made to mail the application and the Declaration to Mr. Curbelo at his last known address, as evidenced by the enclosed letter. dated September 12, 2003 and the corresponding shipment receipt from Federal Express.

(EXHIBIT B)

10. Several attempts were subsequently made to contact Mr. Curbelo by phone but the calls were not returned. On June 16, 2004, Mr. Curbelo did return a phone call to me. Mr. Curbelo indicated that unless he received additional compensation, he would refuse to sign the declaration of inventorship.

11. Presently, Mr. Curbelo refuses to sign the declaration or participate in the prosecution of the application. Mr. Curbelo's refusal to sign is in violation of the terms of his employment with the Assignee, as specified in the Invention Agreement. The Assignee has made reasonable and diligent efforts to obtain Mr. Curbelo's signature including mailing the declaration to him, and I myself have attempted to contact him by phone several times.

12. Upon information and belief, Mr. Curbelo's mailing and residential address is:

24 Philip Rd
Lexington, MA 02421

13. Upon information and belief, Mr. Curbelo is a United States citizen.

14. It is respectfully requested that this petition under 37 C.F.R. §1.47 be granted in all respects and that the Assignee be granted whatever other remedies are available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that

10/626,094
Reply dated June 21, 2004 to
Notice to File Missing Parts dated April 20, 2004

these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Fuller", with a long horizontal stroke extending to the right.

Michael Fuller
Digilab LLC

Digilab, LLC
68 Mazzeo Drive
Randolph, MA 02368
ANF:

Digilab[®]

INVENTIONS AGREEMENT

Dear DIGILAB Employee:

The purpose of this letter agreement is to confirm certain understandings between DIGILAB, LLC and yourself ("Employee") relating to your employment by DIGILAB as follows:

1. As used herein the word "Inventions" will mean all designs, inventions, ideas, developments and improvements, whether patentable or not, as well as patents and patent applications made, conceived, prepared or developed by employee, either alone or jointly with others, while Employee is employed by DIGILAB.
2. Employee will promptly communicate and disclose to DIGILAB all Inventions. Employee agrees that DIGILAB will be the owner of all Inventions, and Employee hereby assigns to DIGILAB any and all right, title and interest which Employee may have therein.
3. As to all Inventions, Employee will, upon request of DIGILAB, which request may be made during Employee's employment by DIGILAB or thereafter:
 - a) execute all documents which DIGILAB shall deem necessary or proper to enable it to establish title to such Inventions and to enable it to file and prosecute applications for letters patent of the United States and any foreign country, and
 - b) do all other things (including the giving of evidence in suits and other proceedings) which DIGILAB deems necessary or proper to obtain, maintain, or assert patents for any and all such Inventions or to assert its rights in any Inventions not patented.
4. All reasonable out of pocket expenses approved in advance by DIGILAB, LLC incident to any action required by DIGILAB or taken on its behalf pursuant to the provisions of paragraph 3 above will be borne by DIGILAB, LLC, including without limitations, a reasonable payment for Employee's time involved if Employee is not then in the employ of DIGILAB, LLC.
5. Employee will promptly communicate and disclose to DIGILAB all other information, observations, and data obtained or developed by Employee in the course of his employment with DIGILAB. All written materials, records, and documents made by Employee or coming into Employee's possession during his employment with DIGILAB concerning any Inventions, products, processes, or

Digilab[®]

INVENTIONS AGREEMENT

equipment, manufactured, used, developed, investigated, or considered by DIGILAB or any of its affiliates, will be the property of DIGILAB, and upon termination of employment or upon earlier request of DIGILAB at any time, Employee will promptly deliver the same to DIGILAB. Employee agrees to render such reports to DIGILAB of the activities undertaken by him/her or conducted under his/her direction during his/her employment with DIGILAB as DIGILAB may reasonably request.

6. Employee will not without DIGILAB written consent at any time during his/her employment with DIGILAB or thereafter communicate or disclose to any person or use for his/her own account any of the Inventions or any information, observations, data, written materials, records or documents referred to herein, or any processes, equipment or products of DIGILAB, or any information concerning DIGILAB's business or affairs or concerning the business or affairs of its affiliates, suppliers, or customers (including without limitation customer lists), it being understood, however, that the obligations of this paragraph will not apply if and to the extent that the aforesaid matters become generally known to and available for use by the public otherwise than by Employee's act or omission.

7. Employee understands that his execution of this letter agreement is a material inducement to DIGILAB to employ Employee. However, nothing in this letter agreement will be construed to obligate either DIGILAB or the Employee to continue the employment relationship, it being understood that this is not intended to be an employment contract and that either party is free to discontinue the employment at any time with or without notice.

Agreed: *Raul Corbelo*
(Employee Signature)

Date: 11-9-01

Name: *Raul Corbelo*
(Employee printed name)

Witnessed By: *[Signature]*
(Digilab LLC)

Date: 7

DIGILAB®

68 Mazzeo Drive
Randolph, MA 02368
(800) 225-1248, (781) 794-6400
Fax: (781) 986-5013
Intn'l Fax: (781) 794-6600
www.digilabglobal.com

September 12, 2003

Dear Raul;

I hope this letter finds you well. I have enclosed some documentation regarding the Infrared Source patent, which requires your signature. If you could please sign where indicated and return at your earliest convenience it would be greatly appreciated. Thank you for your cooperation with this matter.

Sincerely

Joe Griffin

POWERSHIP USAGE



DATE: 9/16/03

YOUR NAME: Karen Mahoney

YOUR DEPARTMENT: Purchasing

METHOD OF SHIPMENT: UPS
(FED X, UPS etc.)

TYPE OF SERVICE: Regular
(Priority, 2ND Day etc.)

DIGILAB PO#: N/A

CUSTOMER PO#: N/A

CONTENTS:
(Optional)

CUSTOMER/VENDOR NAME & ADDRESS: Raul Curbelo
24 Philip Rd
Lexington, Ma 02421

CONTACT NAME & PHONE #:

VENDOR #:

SPECIAL INSTRUCTIONS: Send Fed X ----- Add Fed X Return Envelope

COD AMT: 0.00
INS AMT: .00

1Z0345820300011698

WEIGHT: 0.718

SHP CHG: 4.54
COD CHG: .00
INS CHG: .00
HND CHG: .00
OTH CHG: 0.00

TOT CHG: \$4.54